

(1)

Supreme Court, U.S.
FILED

05-423 OCT 3 - 2005

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

RUSSELL L. LEE,

Petitioner,

v.

STATE COMPENSATION INSURANCE FUND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

RUSSELL L. LEE
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Washington, D.C. 20016
(202) 364-1187
Petitioner Pro Se.

October 3, 2005

(i)

QUESTION PRESENTED

Did the District of Columbia Superior Court violate the Full Faith and Credit Clause of the Constitution and its implementing federal statute by failing to treat Plaintiff's prior California award as res judicata?

PARTIES TO THE PROCEEDING

The parties to the proceeding are as stated on the cover of this Petition For Writ Of Certiorari.

PETITION FOR WRIT OF CERTIORARI

Petitioner Russell L. Lee asks the Court to issue a writ of certiorari to review the judgment of the District of Columbia Court of Appeals, affirming the judgment of the Superior Court.

OPINIONS BELOW

The order of the Court of Appeals which affirmed the judgment of the trial court issued on June 8, 2005, and is reproduced herein as Appendix A (p. 1a). The order denying rehearing issued on July 6, 2005, and is reproduced herein as Appendix B (p. 8a). The order of the Superior Court issued on March 31, 2004, and is reproduced herein as Appendix C (p. 10a). The orders are unpublished.

JURISDICTION

The District of Columbia Court of Appeals entered its opinion on June 8, 2005. Petitioner's petition for rehearing was denied July 6, 2005. The Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

RELEVANT STATUTORY PROVISION

This case entails the interpretation and application of Full Faith and Credit, Title 28 U.S.C. Section 1738. (App. D, p. 12a).

STATEMENT OF THE CASE

This petition seeks review of a decision of the Court of Appeals for the District of Columbia upholding a

decision of the Honorable Michael L. Rankin, Associate Judge of the Superior Court, who dismissed Plaintiff's complaint filed to enforce a workers' compensation award. A copy of award is attached hereto as Appendix E (p. 5a).

Petitioner believes that the decision of the Court of Appeals is inconsistent with numerous controlling decisions of this Court.

SUMMARY OF ARGUMENT

Petitioner's right to enforce his award in the District of Columbia Superior Court is guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

The complaint alleges that jurisdiction is founded on 28 U.S.C. 1738. The trial court granted Defendant's motion and dismissed the complaint on grounds that "Plaintiff failed to show that the D.C. Superior Court has personal jurisdiction, and that, in any event, he failed to state a cognizable claim." Super.Ct.Civ.R. 12(b)(2) and (b)(6).

In affirming, the Court of Appeals relied on *International Shoe Co. v. Washington*, 326 U.S. 310, as controlling authority. The issue in *International Shoe* — Must a foreign corporation pay certain taxes in the forum state? — turned on local law and no foreign judgment was involved. *Local law has no application in a diversity suit predicated on a foreign judgment.*

The statute merely provides the standard to be used in evaluating any judicial acts introduced into pro-

ceedings over which the court already has jurisdiction. In this case plaintiff has founded jurisdiction on diversity of citizenship, and Congress, by the exercise of its express and implied powers, has federalized all relevant legal questions — a diversity case in which there are no issues of forum state law.

Hazen Research, Inc. v. Omega Minerals, Inc., 497 F.2d 151, 156 (5th Cir. 1974). The court would have realized that full faith and credit confers personal jurisdiction on the courts, had it looked to the *res judicata* law of California. *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75. Under California law,

“ ‘Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata or claim preclusion prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings.’ [Citation.] Under the doctrine of *res judicata*, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit. . . .” (*Mycogen Corp. v. Monsanto Co.* (2002).

Richard B. Levine, Inc. v. Higashi, G032995 (Cal.App. 2005). Because Respondent did not litigate failure-to-state-a-claim in the original suit, it cannot do so here.

A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and *res judicata*, is that a “right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies”

Montana v. United States, 440 U.S. 147, 153 (1979). "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.*

REASONS FOR GRANTING THE PETITION

I.

THE DECISION OF THE COURT OF APPEALS VIOLATES PETITIONER'S RIGHT TO THE APPLICATION OF PROCEDURAL DUE PROCESS HEREIN.

"There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an Act of Congress." *Rose v. Arkansas State Police*, 479 U.S. 1, 3 (1986). The effectual decision of the Court of Appeals, that local law dominates federal law, clashes with the federal interest in uniform dispute resolution.

II.

THE PROVISION IN THE CONSTITUTION MAKING IT THE DUTY OF COURTS IN ONE STATE TO GIVE FULL FAITH AND CREDIT TO THE DECREES AND LEGISLATIVE ACTS OF OTHER STATES IS MANDATORY. THE SUPERIOR COURT HAD A MINISTERIAL ACT TO PERFORM — IN OBEDIENCE TO THE FULL FAITH AND CREDIT COMMAND.

Respondent at no point below addressed in the least an integral part of the full faith and credit domain, *res judicata*.

"The principles of res judicata apply to questions of jurisdiction as well as to other issues." *American Surety Co. v. Baldwin*, 287 U.S. 156, 166. Plaintiff is entitled as a matter of right to have his California decree given effect in the District of Columbia.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

RUSSELL L. LEE

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October 3, 2005

APPENDIX A

[Filed June 8, 2005]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 04-CV-778

RUSSELL LEE, APPELLANT,

v.

CA-414-04

STATE COMPENSATION INSURANCE
FUND, APPELLEE.

Appeal from the Superior Court of the
District of Columbia
Civil Division

(Hon. Michael L. Rankin, Trial Judge)

(Submitted June 7, 2005 – Decided June 8, 2005)

Before SCHWELB, FARRELL and REID, *Associate
Judges.*

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: On January 20, 2004, the appellant, Russell Lee, filed a complaint in the Superior Court against the appellee, State Compensation Insurance Fund ("Fund"), and "adjusting agent for the California Depart-

ment of Corrections," alleging that the Fund had failed to comply with a judgment entered in October 1990 in California. By order dated March 31, 2004, the trial court dismissed Mr. Lee's complaint for want of personal jurisdiction and for failing to state a claim. We affirm.

FACTUAL SUMMARY

The record before the court reflects that on January 20, 2004, Mr. Lee filed a complaint in the Superior Court against the State Compensation Insurance Fund ("Fund").¹ Mr. Lee alleged that the Fund had failed to comply with a judgment, entered by a California state court, awarding him disability benefits for an injury "to his heart and psyche" that he suffered "during the period [from] October 17, 1979 to May 2, 1985," while an employee of the California Department of Corrections. On February 11, 2004, the Fund filed a motion to dismiss Mr. Lee's complaint, asserting that the Superior Court lacked personal jurisdiction over the Fund, a non-resident entity, to adjudicate Mr. Lee's claim. The Fund also asserted that Mr. Lee's complaint should be dismissed for insufficient service of process and because he had failed to state a claim for which relief could be granted.

By order dated March 31, 2004, the trial court dismissed Mr. Lee's complaint with prejudice. The trial court concluded that Mr. Lee "failed to show that the D.C. Superior Court has personal jurisdiction," and that,

¹The State Compensation Insurance Fund maintains that it is an "insurer of last resort" which was "created by the California legislature to . . . [insure] California employers who are required to secure workers' compensation insurance in the event their employees suffer industrial accidents or injuries."

in any event, he had "failed to state a cognizable claim." On April 7, 2004, Mr. Lee filed a motion for reconsideration which the trial court denied on May 20, 2004. On June 21, 2004, Mr. Lee filed a timely notice of appeal.

ANALYSIS

Relying on the doctrine of *res judicata*, Mr. Lee asserts that the Fund was prevented from asserting a personal jurisdiction defense because it had failed to raise the defense in the California proceedings when the case was first litigated. Mr. Lee also asserts that "[the Fund] should have raised its failure-to-state-a-claim issue in California, not in the District."² We affirm.

"As an initial matter, we note that [Mr. Lee], as the plaintiff, has the burden of establishing that the trial court had personal jurisdiction over [the Fund], the . . . defendant in the litigation." *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001) (citing *Parsons v. Mains*, 580 A.2d 1329, 1330 (D.C. 1990)). "A court may assert personal jurisdiction over a non-resident defendant where service of process is authorized by statute and where the service of process so authorized

²In the conclusion of his opening brief, Mr. Lee states that: "Orders disregarding full faith and credit cannot invalidate the judgment." To the extent that he relies on the Full Faith and Credit clause of Article IV, § 1 of the Constitution of the United States, that reliance is misplaced. Generally, that clause applies to "[a] final judgment . . . rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment." *Franchise Tax Bd. v. Hyatt*, 538 U.S. 488, 494 (U.S. 2003) (citation omitted). Here, there is no indication in the record that any California workers' compensation award applicable to Mr. Lee has been properly certified. See 28 U.S.C. § 1739.

is consistent with due process.” *Mouzavires v. Baxter*, 434 A.2d 988, 990 (D.C. 1981) (citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)). Pursuant to the District’s long-arm statute, see D.C. Code § 13-423 (2001), a court in the District of Columbia may only exercise jurisdiction over an out-of-state defendant in seven enumerated situations.³ While the District’s long-arm statute “is coextensive in reach with the personal jurisdiction allowed by the due process clause of the United States Constitution,” see *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 329 (D.C. 2000) (en banc), Mr. Lee “must allege some specific facts evidencing purposeful activity by the defendant in the District

³D.C. Code § 13-423 provides, in relevant part:

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person’s —

- (1) transacting any business in the District of Columbia;
- (2) contracting to supply services in the District of Columbia;
- (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;
- (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;
- (5) having an interest in, using, or possessing real property in the District of Columbia;
- (6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing; or
- (7) [there is a] marital or parent and child relationship in the District of Columbia

including the District of Columbia. This contention is untenable, and would "offend traditional notions of fair play and substantial justice." *International Shoe Co.*, 326 U.S. at 316.

We agree with the trial court that it lacked personal jurisdiction to adjudicate Mr. Lee's claim. The Fund, an insurer of last resort, was created by the California legislature to protect California employers against accidents and injuries to their employees. As Mr. Lee acknowledges, the Fund is principally organized and located in California, and does not maintain an office in the District of Columbia. Nor does it transact business or have any enumerated contacts with the District of Columbia. The single contact that the Fund has with the District — specifically, it mails disability payments to Mr. Lee's home — is a result of Mr. Lee's unilateral decision to move into the District of Columbia. However, "[a] plaintiff's unilateral activity in relation to a defendant cannot alone sustain personal jurisdiction under the 'minimum contacts' theory." *Shopper Food Warehouse*, 746 A.2d at 325 (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)). Based on this record, there is nothing to suggest that the Fund has "purposefully avail[ed] itself of the privilege of conducting activities within the [District]." *Id.*

In sum, Mr. Lee has failed to allege specific facts, or any facts at all for that matter, which would demonstrate that the Fund has maintained some "minimum contacts" with the District of Columbia. See *Shoppers Food Warehouse*, *supra*. Without such a showing, the trial court could not, consistent with fundamental principles of due process, exercise jurisdiction over the Fund. — See *International Shoe Co.*, *supra*. Finally, even if we were to look beyond the substance of Mr. Lee's com-

of Columbia by which it invoked the benefits and protects of the District's laws," *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F.Supp. 515, 520 (D.D.C. 1995).

In his complaint, and even on appeal, Mr. Lee has failed to allege "some specific facts," see *COMSAT, supra*, which would show that the Fund had "minimum contacts" with the District "such that the maintenance of the suit [would] not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (U.S. 1945) (citation and quotation marks omitted). Instead, Mr. Lee argues that the Fund is procedurally barred from asserting a personal jurisdiction defense because it failed to raise the defense in California when the case was first litigated. The trial court erred, he reasons, by considering a defense which should have been raised, if at all, in the California court.

Mr. Lee is correct that in some circumstances a defendant's failure to contest a court's exercise of jurisdiction will act as a bar to the defendant's ability to raise the issue in a subsequent proceeding. See, e.g., *Hazen Research, Inc. v. Omega Minerals, Inc.*, 497 F.2d 151, 153 (5th Cir. 1974) ("Where the defendant has appeared in the original action, the judgment in that cause is res judicata on the issue of personal jurisdiction, whether the defendant actually litigated the question or merely permitted it to pass without objection."). However, contrary to Mr. Lee's contention, a defendant's failure to raise a personal jurisdiction defense in one state does not necessarily make the defendant vulnerable to suit in every state. Taken to its logical extreme, Mr. Lee's argument suggests that because the Fund did not object to the California court's exercise of personal jurisdiction in the original suit, it may now be sued in any state court,

plaint, the simple act of sending correspondence into the District would not satisfy the " 'minimum contacts' requirement of the due process clause." *Shoppers Food Warehouse*, 746 A.2d at 324. See *General Electric Credit Corp. v. Scott's Furniture Warehouse Showroom, Inc.*, 699 F. Supp. 907, 913 (D. Ga. 1988) ("[T]here is a substantial body of case law indicating that the agreement to mail payment checks into a forum state does not weigh heavily in the calculus of [minimum] contacts [analysis].") (citing *Sea Lift, Inc. v. Refinadora Costarricense de Petroleo, S.A.*, 792 F.2d 989, 994 (11th Cir. 1986)).

Accordingly, for the foregoing reasons, we affirm the judgment of the trial court.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

/s/ Garland Pinkston, Jr.
GARLAND PINKSTON, JR.
Clerk of the Court

Copies to:

Hon. Michael L. Rankin

Clerk, Superior Court

Russell Lee, pro se

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APPENDIX B

[Filed JUL 6 2005]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 04-CV-778

RUSSELL L. LEE,

Appellant,

v.

CA 414-04

STATE COMPENSATION INSURANCE FUND,

Appellee.

BEFORE: Schwelb, Farrell, and Reid, Associate Judges.

ORDER

On consideration of appellant's *pro se* motion for reconsideration, it is

ORDERED that the motion for reconsideration is denied.

PER CURIAM

Copies to:

Honorable Michael L. Rankin
Clerk, Superior Court

9a

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APPENDIX C

[Filed MAR 31 2004]

SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 04CA00414

Russell L. Lee, *pro se*

Plaintiff, -

v.

State Compensation Insurance Fund,

Defendant.

ORDER

Upon consideration of the Motion to Dismiss of Defendant State Compensation Insurance Fund and the Memorandum of Points and Authorities submitted in support there, and the opposition, this Court finds that the Motion is granted, and the Complaint of Russell Lee is dismissed with prejudice. Plaintiff has failed to show that the D.C. Superior Court has personal jurisdiction. Moreover, he failed to state a cognizable claim.

This 29 day of March, 2004.

Michael Rankin
Judge Michael L. Rankin

11a

Signed In Chambers

DOCKETED APR 02 2004

MAILED APR 02 2004

APPENDIX D

RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS

28 U.S.C. section 1738. State and Territorial statutes and judicial proceedings; full faith and credit:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

D.C. Code Section 14-352 reads in full:

A copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Office of the Clerk of the Superior Court ("Clerk"). A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner.

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. 84 POM 96894

RUSSELL L. LEE

Applicant,

vs.

DEPARTMENT OF CORRECTIONS;
STATE COMPENSATION INSURANCE FUND

Defendants.

FINDINGS AND AWARD

BEVERLY S. HERBERT, Workers' Compensation Judge, finds, awards, and orders as follows:

FINDINGS OF FACT

(1) RUSSELL L. LEE, born July 15, 1921, while employed as a teacher, during the period October 17, 1979 to May 2 1985 did sustain an injury to his heart and psyche arising out of and occurring in the course of employment by the State of California, Department of Corrections who was then legally uninsured, with State Compensation Insurance Fund as adjusting agent, sustained injury arising out of and in the course of said employment.

(2) Average weekly earnings at injury were maximum.

(3) In addition to sums paid for previous awards, the injury caused temporary total disability beginning July 8, 1988, to and including April 21, 1989 at \$224.00 per week, in the total sum of less all sums paid on account thereof.

(4) The injury caused permanent disability of 100% equivalent to \$224.00 per week for the duration of applicant's life less credit for all sums paid on account thereof. Disability became permanent on April 22, 1990.

(5) Further medical treatment is required to cure or relieve from the effects of this injury.

(6) Applicant secured necessary medical services to cure or relieve from the effects of his injury payable to Drs. Tweed and McCandless in an amount to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents, but not necessarily limited to those doctors.

(7) The reasonable value of the services of applicant's attorney is deferred pending a petition by counsel with itemization on time spent by counsel in this manner.

AWARD

AWARD IS MADE in favor of RUSSELL L. LEE, and against STATE COMPENSATION INSURANCE FUND as follows:

(a) Temporary disability indemnity pursuant to Finding No. 3.

(b) Reimbursement of self-procured medical expenses according to Finding No. 6.

(c) Permanent disability according to Finding No. 4.

(d) Further medical treatment according to Finding No. 5.

7. (e) Applicant attorney's fees pursuant to Finding No.

/s/ Beverly S. Herbert
BEVERLY S. HERBERT
WORKERS' COMPENSATION JUDGE

Filed and Served by mail on:
all parties on the
Official Address Record
By: /s/ Gloria Fisher
Gloria Fisher
10-4-90

